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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,789	01/02/2004	Raymond L. Myers	32/1198US(3)	1486
22822 7590 02/08/2008 LEWIS, RICE & FINGERSH, LC ATTN: BOX IP DEPT. 500 NORTH BROADWAY SUITE 2000 ST LOUIS, MO 63102				
EXAMINER				
SHAY, DAVID M				
ART UNIT		PAPER NUMBER		
3735				
NOTIFICATION DATE		DELIVERY MODE		
02/08/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPDEPT@LEWISRICE.COM  
KDAMMAN@LEWISRICE.COM

### Office Action Summary

**Application No.**

10/750,789

**Applicant(s)**

MYERS ET AL.

**Examiner**

david shay

**Art Unit**

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on October 22, 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11 and 15-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SI/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Applicant argues that the rejection under 35 U.S.C. 112, second paragraph is remedied by the amendments. While this is true for the rejections stemming from claims 1, 5, and 14, the indefiniteness of claim 19 still remains unresolved.

With regard to the art rejection, applicant argues that since Bille et al shows configurations of spheres that do not remain separate, the instant method reads over that of Bille et al. This argument is not convincing for a variety of reasons. Firstly, as the claims are worded such that if a group of N microspheres were created, such that N-1 microspheres were touching and the N<sup>th</sup> microsphere placed in a remote location, this would constitute "the microsphere created in one step of ereating remains separate from any other microsphere created during another step of creating" (emphasis added). Secondly since the instant claims are comprising-type claims, they would include processes wherein a number of separate microbubbles are created and subsequently joined by additionally placed microbubbles. Otherwise one would be in the position of asserting that a method fulfilling all the steps recited in the instant claims, would fall outside of the claim language if an additional step (e.g. placing a microsphere that connects two extant microspheres) were performed. Clearly this cannot be the case for a comprising-type claim. Bille et al teach just such a deposition of microspheres (see Fig. 2, and column 5, lines 21-44) and at least the intermediate portion of the method (e.g. that shown in Fig. 2) would read on the method as claimed, even in a "consisting of" format.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Claim 19 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 19, exactly what is intended to be conveyed by the term “the step of selecting primarily including...” is unclear, it is unclear how “primarily including” differs from “including”.

Claims 1-9, 11, and 17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bille et al.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al in combination with Perricone. Bille et al teach a method as claimed except for any discussion of the use of antioxidants. Perricone teaches the desirability of providing antioxidants to eye tissue. It would have been obvious to the artisan or ordinary skill to employ antioxidants in the method of Bille et al, since antioxidants help prevent damage to delicate ocular tissues by free radicals, as taught by Perricone, thus producing a method such as claimed.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bille et al in combination with Schachar. Schachar teaches a method for correcting vision, including heating the lens in the equatorial region. It would have been obvious to the artisan of ordinary skill to place the ablations of Bille et al in the regions suggested by Schachar, since this is the region where the bulk of the lens tissue is, and which heating would shrink the capsule to some degree, and to provide the various refractive corrections via lens rather than corneal ablation, since these are both recognized as candidates for refractive alteration to improve vision, thus producing a method such as claimed.

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Applicant's arguments filed October 22, 2007 have been fully considered but they are not persuasive. The arguments are not persuasive for the reasons set forth above.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

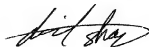
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "David Shay", with a stylized flourish at the end.

DAVID M. SHAY  
PRIMARY EXAMINER